

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1128

Introduced by Senator Padilla

February 21, 2012

An act to amend ~~Section~~ *Sections 26003, 26011, and 26011.8* of the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1128, as amended, Padilla. Energy: alternative energy financing.

Existing law authorizes the California Alternative Energy and Advanced Transportation Financing Authority, until January 1, 2021, to provide financial assistance in the form of ~~the a~~ sales and use tax exclusion for a project to promote California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or the reduction in air and water pollution or energy consumption.

This bill would additionally authorize the authority to grant the above financial assistance to projects that promote the utilization of advanced manufacturing, as defined.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 26003 of the Public Resources Code is*
2 *amended to read:*

3 26003. As used in this division, unless the context otherwise
4 requires:

5 (a) ~~“Authority” means the California Alternative Energy and~~
6 ~~Advanced Transportation Financing Authority established pursuant~~

1 to Section 26004, and any board, commission, department, or
2 officer succeeding to the functions of the authority, or to which
3 the powers conferred upon the authority by this division shall be
4 given.

5 (b) “Cost” as applied to a project or portion of the project
6 financed under this division means all or part of the cost of
7 construction and acquisition of all lands, structures, real or personal
8 property or an interest in the real or personal property, rights,
9 rights-of-way, franchises, easements, and interests acquired or
10 used for a project; the cost of demolishing or removing any
11 buildings or structures on land so acquired, including the cost of
12 acquiring any lands to which those buildings or structures may be
13 moved; the cost of all machinery, equipment, and furnishings;
14 financing charges, interest prior to, during, and for a period after,
15 completion of construction as determined by the authority; the cost
16 of the purchase or sale of energy derived from an alternative source
17 pursuant to subdivision (g) of Section 26011; provisions for
18 working capital; reserves for principal and interest and for
19 extensions, enlargements, additions, replacements, renovations,
20 and improvements; the cost of architectural, engineering, financial,
21 accounting, auditing and legal services, plans, specifications,
22 estimates, administrative expenses, and other expenses necessary
23 or incident to determining the feasibility of constructing any project
24 or incident to the construction, acquisition, or financing of a
25 project.

26 (c) (1) “Alternative sources” means the application of
27 cogeneration technology, as defined in Section 25134; the
28 conservation of energy; or the use of solar, biomass, wind,
29 geothermal, hydroelectricity under 30 megawatts, or any other
30 source of energy, the efficient use of which will reduce the use of
31 fossil and nuclear fuels.

32 (2) “Alternative sources” does not include a hydroelectric facility
33 that does not meet state laws pertaining to the control,
34 appropriation, use, and distribution of water, including, but not
35 limited to, the obtaining of applicable licenses and permits.

36 (a) (1) “Advanced manufacturing” means manufacturing that
37 improves existing, or creates entirely new, materials, products,
38 and processes through the use of science, engineering, or
39 information technologies, high-precision tools and methods, a

1 *high-performance workforce, and innovative business or*
2 *organizational models in any of the following technology areas:*

3 (A) *Micro- and nanoelectronics, including semiconductors.*

4 (B) *Advanced materials.*

5 (C) *Integrated computational materials engineering.*

6 (D) *Nanotechnology.*

7 (E) *Additive manufacturing.*

8 (F) *Industrial biotechnology.*

9 (2) *“Advanced manufacturing” includes all of the following:*

10 (A) *A production system capable of furnishing a mix of products*
11 *in small or large volumes, with both the efficiency of mass*
12 *production and the flexibility of custom manufacturing, to respond*
13 *rapidly to customer demand and desired quality.*

14 (B) *Systems that result from substantive advancement, whether*
15 *incremental or breakthrough, over the current state of the art, in*
16 *the production of materials and products. These advancements*
17 *include improvements in manufacturing processes and systems*
18 *that are often referred to as “smart” or “intelligent”*
19 *manufacturing systems, which integrate computational*
20 *predictability and operational efficiency.*

21 (C) *Systems that produce goods that minimize the use of*
22 *resources while maintaining or improving cost and performance.*

23 (D) *Systems that are sustainable.*

24 ~~(d)~~

25 (b) *“Advanced transportation technologies” means emerging*
26 *commercially competitive transportation-related technologies*
27 *identified by the authority as capable of creating long-term, high*
28 *value-added jobs for Californians while enhancing the state’s*
29 *commitment to energy conservation, pollution reduction, and*
30 *transportation efficiency. Those technologies may include, but are*
31 *not limited to, any of the following:*

32 (1) *Intelligent vehicle highway systems.*

33 (2) *Advanced telecommunications for transportation.*

34 (3) *Command, control, and communications for public transit*
35 *vehicles and systems.*

36 (4) *Electric vehicles and ultralow-emission vehicles.*

37 (5) *High-speed rail and magnetic levitation passenger systems.*

38 (6) *Fuel cells.*

39 (c) (1) *“Alternative sources” means the application of*
40 *cogeneration technology, as defined in Section 25134; the*

1 conservation of energy; or the use of solar, biomass, wind,
2 geothermal, hydroelectricity under 30 megawatts, or any other
3 source of energy, the efficient use of which will reduce the use of
4 fossil and nuclear fuels.

5 (2) “Alternative sources” does not include a hydroelectric
6 facility that does not meet state laws pertaining to the control,
7 appropriation, use, and distribution of water, including, but not
8 limited to, the obtaining of applicable licenses and permits.

9 (d) “Authority” means the California Alternative Energy and
10 Advanced Transportation Financing Authority established pursuant
11 to Section 26004, and any board, commission, department, or
12 officer succeeding to the functions of the authority, or to which
13 the powers conferred upon the authority by this division shall be
14 given.

15 (e) “Cost” as applied to a project or portion of the project
16 financed under this division means all or part of the cost of
17 construction and acquisition of all lands, structures, real or
18 personal property or an interest in the real or personal property,
19 rights, rights-of-way, franchises, easements, and interests acquired
20 or used for a project; the cost of demolishing or removing any
21 buildings or structures on land so acquired, including the cost of
22 acquiring any lands to which those buildings or structures may
23 be moved; the cost of all machinery, equipment, and furnishings,
24 financing charges, interest prior to, during, and for a period after,
25 completion of construction as determined by the authority; the
26 cost of the purchase or sale of energy derived from an alternative
27 source pursuant to subdivision (g) of Section 26011; provisions
28 for working capital; reserves for principal and interest and for
29 extensions, enlargements, additions, replacements, renovations,
30 and improvements; the cost of architectural, engineering, financial,
31 accounting, auditing and legal services, plans, specifications,
32 estimates, administrative expenses, and other expenses necessary
33 or incident to determining the feasibility of constructing any project
34 or incident to the construction, acquisition, or financing of a
35 project.

36 ~~(e)~~

37 (f) “Financial assistance” includes, but is not limited to, either,
38 or any combination, of the following:

39 (1) Loans, loan loss reserves, interest rate reductions, proceeds
40 of bonds issued by the authority, insurance, guarantees or other

1 credit enhancements or liquidity facilities, contributions of money,
2 property, labor, or other items of value, or any combination thereof,
3 as determined by, and approved by the resolution of, the board.

4 (2) Any other type of assistance the authority determines is
5 appropriate.

6 ~~(f)~~—

7 (g) “Participating party” means either of the following:

8 (1) A person, or an entity or group of entities engaged in
9 business or operations in the state, whether organized for profit or
10 not for profit, that does either of the following:

11 (A) Applies for financial assistance from the authority for the
12 purpose of implementing a project in a manner prescribed by the
13 authority.

14 (B) Participates in the purchase or sale of energy derived from
15 an alternative source pursuant to subdivision (g) of Section 26011.

16 (2) A public agency or nonprofit corporation that does either of
17 the following:

18 (A) Applies for financial assistance from the authority for the
19 purpose of implementing a project in a manner prescribed by the
20 authority.

21 (B) Participates in the purchase or sale of energy derived from
22 an alternative source pursuant to subdivision (g) of Section 26011.

23 ~~(g)~~—

24 (h) (1) “Project” means a land, building, improvement to the
25 land or building, rehabilitation, work, property, or structure, real
26 or personal, stationary or mobile, including, but not limited to,
27 machinery and equipment, whether or not in existence or under
28 construction, that utilizes, or is designed to utilize, an alternative
29 source, or that is utilized for the design, technology transfer,
30 manufacture, production, assembly, distribution, or service of
31 advanced transportation technologies, alternative source
32 components, or an arrangement for the purchase, including
33 prepayment, or sale of energy derived from an alternative source
34 pursuant to subdivision (g) of Section 26011.

35 (2) “Project,” for the purposes of Section 26011.8, means any
36 tangible personal property that is utilized for the design,
37 manufacture, production, or assembly of advanced transportation
38 technologies or alternative source products, components, or
39 systems.

40 ~~(h)~~—

(i) “Public agency” means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county, city and county, city, regional agency, public district, school district, or other political entity.

~~(i)–~~

(j) (1) “Renewable energy” means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

(A) Biomass.

(B) Solar thermal.

(C) Photovoltaic.

(D) Wind.

(E) Geothermal.

(2) For purposes of this subdivision, “conventional energy fuel” means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for the purposes of this section, “renewable energy” also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines; landfill gas turbines, engines, and microturbines; digester gas turbines, engines, and microturbines; and fuel cells.

~~(j)–~~

(k) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 2. Section 26011 of the Public Resources Code is amended to read:

26011. The authority is authorized and empowered:

(a) To adopt an official seal.

(b) To sue and be sued in its own name.

1 (c) To issue bonds, notes, bond anticipation notes, and other
2 obligations of the authority, including, at the option of the
3 authority, obligations bearing interest that is taxable for purposes
4 of federal income taxation, for any of its purposes and to fund or
5 refund the same, all as provided in this division.

6 (d) To determine the location and character of a project to be
7 financed under the provisions of this division, to lend financial
8 assistance to a participating party, to enter into loan agreements
9 with a participating party for the financing of a project including
10 creating a lien or security interest in the property, to construct,
11 reconstruct, renovate, replace, lease, as lessor or lessee, and
12 regulate the same, and to enter into contracts for the sale of a
13 project, including installment sales or sales under conditional sales
14 contracts.

15 (e) To fix fees and charges for projects, and interest rates with
16 respect to loans for projects, and to revise from time to time the
17 fees and charges and interest rates, and to collect rates, rents, fees,
18 and charges for the use of, and for a facility or service furnished,
19 or to be furnished, by a project or part of the project and to contract
20 with a person, partnership, association, corporation, or public
21 agency with respect to the project, and to fix the terms and
22 conditions upon which a project may be sold or disposed of,
23 whether upon installment sales contracts or otherwise.

24 (f) To employ and fix the compensation of bond counsel,
25 financial consultants, and advisers as may be necessary in its
26 judgment in connection with the issuance and sale of any bonds,
27 notes, bond anticipation notes, or other obligations of the authority;
28 to contract for engineering, architectural, accounting, or other
29 services of appropriate state agencies as may be necessary in the
30 judgment of the authority for the successful development of a
31 project; and to pay the reasonable costs of consulting engineers,
32 architects, accountants, and construction experts employed by a
33 participating party if, in the judgment of the authority, the services
34 are necessary to the successful development of a project, and the
35 services are not obtainable from a state agency.

36 (g) To purchase alternative source energy or projects from a
37 person or entity for sale to a participating party, or to make a loan
38 to a participating party to purchase alternative source energy or
39 projects, or to purchase from a person or entity that has contracted
40 to sell alternative source energy to a participating party the right

1 to receive purchase payments and related rights under that contract
2 or any related contracts. Notwithstanding any other applicable law,
3 the authority and a public agency, for purposes of a program or
4 financing, shall have the power to enter into contractual
5 arrangements and related agreements or instruments, including,
6 without limitation, a prepayment purchase contract, lease, loan,
7 construction, security, operation and maintenance, or other
8 agreement or instrument, with the authority or with a participating
9 party, upon the terms and subject to the conditions that may be
10 necessary or convenient to accomplish the purposes of this
11 subdivision. The authority shall only enter into a prepayment
12 contract with a participating party for energy derived from an
13 alternative source to the extent the prepayment is for energy
14 intended to primarily offset part or all of the authority's or a
15 participating party's own electrical requirements.

16 (h) To purchase, with proceeds of its bonds or its revenue, bonds
17 issued by a public agency described in paragraph (2) of subdivision
18 ~~(f)~~ (g) of Section 26003 at a public or negotiated sale. Bonds
19 purchased pursuant to this subdivision may be held by the authority
20 or sold to public or private purchasers at public or negotiated sales,
21 in whole or in part, separately or together with other bonds issued
22 by the authority.

23 (i) To do all things generally necessary or convenient to carry
24 out the purposes of this division.

25 ~~SECTION 1.~~

26 *SEC. 3.* Section 26011.8 of the Public Resources Code is
27 amended to read:

28 26011.8. (a) The purpose of this section is to promote the
29 creation of California-based manufacturing, California-based jobs,
30 advanced manufacturing, the reduction of greenhouse gases, or
31 reductions in air and water pollution or energy consumption. In
32 furtherance of this purpose, the authority may approve a project
33 for financial assistance in the form of the sales and use tax
34 exclusion established in Section 6010.8 of the Revenue and
35 Taxation Code.

36 (b) For purposes of this section, the following terms have the
37 following meanings:

38 ~~(1) "Advanced manufacturing" means any of the following:~~

39 ~~(A) The implementation of process improvements, increasing~~
40 ~~quality controls, and installing advanced technologies, as defined~~

1 ~~by the authority, and other intelligent production systems, as~~
2 ~~defined by the authority.~~

3 ~~(B) The use of a highly skilled and highly compensated~~
4 ~~workforce.~~

5 ~~(C) The rapid transfer and adoption of newly researched and~~
6 ~~developed manufacturing technologies into the manufacturing~~
7 ~~process.~~

8 ~~(2)–~~

9 (1) “Alternative source,” in addition to as provided pursuant
10 to subdivision (c) of Section 26003, includes advanced electric
11 distributive generation technology as defined in Section 379.8 of
12 the Public Utilities Code or energy storage technologies and their
13 component materials.

14 ~~(3)–~~

15 (2) “Project” means a project as defined in paragraph (2) of
16 subdivision ~~(g)~~ (h) of Section 26003.

17 (c) The authority shall publish notice of the availability of
18 project applications and deadlines for submission of project
19 applications to the authority.

20 (d) The authority shall evaluate project applications based upon
21 all of the following criteria:

22 (1) The extent to which the project develops manufacturing
23 facilities, or purchases equipment for manufacturing facilities,
24 located in California.

25 (2) The extent to which the anticipated benefit to the state from
26 the project equals or exceeds the projected benefit to the
27 participating party from the sales and use tax exclusion.

28 (3) The extent to which the project will create new, permanent
29 jobs in California.

30 (4) The extent to which the project utilizes advanced
31 manufacturing, *as defined in subdivision (a) of Section 26003*.

32 (5) To the extent feasible, the extent to which the project, or the
33 product produced by the project, results in a reduction of
34 greenhouse gases, a reduction in air or water pollution, an increase
35 in energy efficiency, or a reduction in energy consumption, beyond
36 what is required by any federal or state law or regulation.

37 (6) The extent of unemployment in the area in which the project
38 is proposed to be located.

39 (7) Any other factors the authority deems appropriate in
40 accordance with this section.

1 (e) At a duly noticed public hearing, the authority shall approve,
2 by resolution, project applications for financial assistance.

3 (f) Notwithstanding subdivision (j), and without regard to the
4 actual date of any transaction between a participating party and
5 the authority, any project ~~as defined in subdivision (g) of Section~~
6 ~~26003~~ approved by the authority by resolution for the sales and
7 use tax exclusion pursuant to Section 6010.8 of the Revenue and
8 Taxation Code prior to the effective date of this section, shall not
9 be subject to this section.

10 (g) The Legislative Analyst's Office shall report to the Joint
11 Legislative Budget Committee on the effectiveness of this program,
12 on or before January 1, 2019, by evaluating factors, including, but
13 not limited to, the following:

14 (1) The number of jobs created by the program in California.

15 (2) The number of businesses that have remained in California
16 or relocated to California as a result of this program.

17 (3) The amount of state and local revenue and economic activity
18 generated by the program.

19 (4) The types of advanced manufacturing, *as defined in*
20 *subdivision (a) of Section 26003*, utilized.

21 (5) The amount of reduction in greenhouse gases, air pollution,
22 water pollution, or energy consumption.

23 (h) Once the exclusions granted pursuant to Section 6010.8 of
24 the Revenue and Taxation Code for projects approved by the
25 authority pursuant to this section exceed one hundred million
26 dollars (\$100,000,000) annually, the authority shall provide a
27 20-day notice to the Legislature prior to making additional
28 approvals pursuant to this section.

29 (i) The authority shall make every effort to expedite the
30 operation of this section, and shall adopt regulations for purposes
31 of implementing the section as emergency regulations in
32 accordance with Chapter 3.5 (commencing with Section 11340)
33 of Part 1 of Division 3 of Title 2 of the Government Code. For
34 purposes of that Chapter 3.5, including Section 11349.6 of the
35 Government Code, the adoption of the regulations shall be
36 considered by the Office of Administrative Law to be necessary
37 for the immediate preservation of the public peace, health and
38 safety, and general welfare.

39 (j) This section shall remain in effect only until January 1, 2021,
40 and as of that date is repealed. The sale or purchase of tangible

1 personal property of a project approved prior to January 1, 2021,
2 shall continue to be excluded from sales and use taxes pursuant to
3 Section 6010.8 of the Revenue and Taxation Code for the period
4 of time set forth in the authority's resolution approving the project
5 pursuant to this section.

O